

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL CASE NO. 3:98cv394

CALVIN R. LUCKEY, <i>et. al.</i>,)	
)	
Plaintiffs,)	
)	
vs.)	<u>ORDER</u>
)	
AcandS, INC., <i>et. al.</i>,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on the Plaintiffs' Motion to Strike the motion for summary judgment and second motion for summary judgment of Defendant Crown Cork & Seal Company, Inc.

The motion to strike is based on the fact that the motion for summary judgment was filed three days after the deadline established in the pre-trial order and case management plan. The second motion for summary judgment was allegedly filed on October 10, 2005. The Court finds the Defendant should be given an opportunity to explain why the late filings were made.

IT IS, THEREFORE, ORDERED that the Defendant Crown Cork & Seal

Company, Inc. shall file response to the motion to strike on or before October 21, 2005.

IT IS FURTHER ORDERED that pending such response, the Plaintiffs' time within which to respond to the motion for summary judgment is suspended and will begin to run as of the date of entry of an Order disposing of the motion to strike.

IT IS FURTHER ORDERED that the parties are to make a good faith effort to resolve the issues concerning exposure involved with this motion and shall make a written report to the Court of such efforts on or before October 21, 2005. In the event that, after the Plaintiff's evidence at trial, judgment is entered on behalf of the Defendant, the Court may assess appropriate and reasonable costs against the offending party or parties.

Signed: October 11, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

